

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARI P. KUNAMNENI,
Plaintiff,

v.

CARLOS M. GUTIERREZ, SECRETARY
OF THE DEPARTMENT OF
COMMERCE,
Defendant.

No. C 08-5154 PJH

**ORDER GRANTING MOTION
TO TRANSFER**

Before the court is defendant Carlos Gutierrez's ("defendant") motion to dismiss for improper venue pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure or, in the alternative, to transfer this case to the United States District Court for the Eastern District of Virginia pursuant to either 28 U.S.C. § 1406(a) or 28 U.S.C. § 1404(a). *Pro se* plaintiff Hari Kunamneni ("plaintiff") opposes the motion. Because the court finds this matter suitable for decision without oral argument, the hearing date of April 29, 2009 is VACATED pursuant to Civil Local Rule 7-1(b). Having carefully read the parties' papers and considered the relevant legal authority, the court hereby GRANTS defendant's motion to transfer, for the reasons stated below.

BACKGROUND

Plaintiff commenced the instant action on November 12, 2008. On March 24, 2009, plaintiff filed an amended complaint alleging that his former employer, the United States Patent and Trademark Office ("USPTO"), an agency of the United States Department of Commerce, discriminated against him on the basis of his disability in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII") and the Rehabilitation

1 Act of 1973, 29 U.S.C. § 701 *et seq.* ("Rehabilitation Act").¹

2 Plaintiff currently resides in Cupertino, CA. Defendant is the Secretary of the
3 Department of Commerce. The headquarters of the USPTO is located in Alexandria,
4 Virginia, which is within the Eastern District of Virginia.

5 On March 25, 2009, defendant filed a motion to motion to dismiss for improper
6 venue or, in the alternative, to transfer this case to the United States District Court for the
7 Eastern District of Virginia. Plaintiff filed an opposition on April 8, 2009. A reply was filed
8 on April 14, 2009. On April 15, 2009, plaintiff filed a "Notice Of Civil Action Pending In
9 Eastern District Of Virginia," advising the court that on January 5, 2009 he filed a similar
10 action in the Eastern District of Virginia, Alexandria Division.

11 DISCUSSION

12 A. Defendant's Motion To Dismiss Or Transfer

13 Defendant moves to dismiss or, in the alternative, to transfer this case for improper
14 venue.

15 Employment discrimination claims under the Rehabilitation Act are governed by Title
16 VII's venue provision, 42 U.S.C. § 2000e-5(f)(3). Bolar v. Frank, 938 F.2d 377, 377-78 (2d
17 Cir. 1991) (holding in Rehabilitation Act case that the specific venue provision of Title VII
18 applies rather than general venue provision in 28 U.S.C. § 1391). In Title VII actions,
19 venue is proper: (1) "in any judicial district in the State in which the unlawful employment
20 practice is alleged to have been committed"; (2) "in the judicial district in which the
21 employment records relevant to such practice are maintained and administered"; "or (3) in
22 the judicial district in which the aggrieved person would have worked but for the alleged
23 unlawful employment practice, but if the respondent is not found within any such district,

24
25 ¹ The court notes that while plaintiff asserts that his employer discriminated against him
26 on the basis of his disability and failed to provided reasonable accommodation of his disability,
27 in violation of Title VII and § 504 of the Rehabilitation Act, 29 U.S.C. § 794, the Ninth Circuit
28 has held that § 501, 29 U.S.C. § 791, is the exclusive remedy for federal employees bringing
a claim of disability discrimination under the Rehabilitation Act. Boyd v. United States Postal
Service, 752 F.2d 410, 413 (9th Cir. 1985).

1 such an action may be brought within the judicial district in which the respondent has his
2 principal office.” 42 U.S.C. § 2000e-5(f)(3). “[T]he only limitation contemplated by th[is]
3 provision is that it seeks to ‘limit venue to the judicial district concerned with the alleged
4 discrimination.’ ” Passantino v. Johnson & Johnson Consumer Products, Inc.,
5 212 F.3d 493, 504 (9th Cir. 2000). “[V]enue should be found where the effect of the
6 unlawful employment practice is felt: where the plaintiff works, and the decision to engage
7 in that practice is implemented.” Id. at 505. Where venue is improper, a district court must
8 either dismiss the case or transfer it “in the interest of justice” to an appropriate jurisdiction.
9 28 U.S.C. § 1406(a); Fed.R.Civ.P. 12(b)(3).

10 As argued by defendant, and as required by the applicable venue provision, the
11 proper venue in this case is the Eastern District of Virginia. The record indicates that
12 plaintiff worked for the USPTO in the Eastern District of Virginia, the alleged unlawful
13 employment practice took place there and plaintiff’s employment records are maintained
14 there. See Decl. of Stacy Hoffman; Decl. of Michael Salley (“Salley”). To the extent that
15 plaintiff contends that but for the alleged unlawful employment practice he would have
16 worked in the Northern District of California, the court finds this contention to lack merit.
17 Neither the allegations in the amended complaint nor the evidence before the court support
18 plaintiff’s position. Plaintiff’s allegation that he “intended” to move to Cupertino, CA to work
19 remotely under the “Patents Hotelling Program (PHP) offered by the Patent and Trademark
20 Office,” even if true, is insufficient to establish that he would have worked remotely from
21 Cupertino, CA but for the allegedly unlawful employment practice. Nor did plaintiff offer any
22 persuasive evidence indicating that he would have worked remotely from Cupertino, CA but
23 for the allegedly unlawful employment practice. In fact, the uncontroverted evidence before
24 the court indicates that plaintiff did not request to relocate or work out of his home as a
25 reasonable accommodation. See Decl. of Salley.

26 In short, the court finds that venue is proper in the Eastern District of Virginia
27 because this is where the effect of the unlawful employment practice was “felt.”
28

1 Accordingly, the court concludes that the "interest of justice" dictates that this action be
2 transferred to the Eastern District of Virginia pursuant to § 1406(a). Moreover, the court
3 concludes that, even assuming that venue is proper in the Northern District of California,
4 transfer of this action to the Eastern District of Virginia is warranted pursuant to § 1404(a).
5 See 28 U.S.C. § 1404(a) ("For the convenience of parties and witnesses, in the interest of
6 justice, a district court may transfer any civil action to any other district or division where it
7 might have been brought.").

8 **CONCLUSION**

9 For the reasons stated above, the court hereby GRANTS defendant's motion to
10 transfer. This case is hereby transferred to the Eastern District of Virginia.

11 **IT IS SO ORDERED.**

12 Dated: April 21, 2009

13
14 

15

PHYLLIS J. HAMILTON
16 United States District Court
17
18
19
20
21
22
23
24
25
26
27
28